

can be met by providing such an affidavit from one or more individuals who did not witness the incident, provided the individual was directly informed by one or more employees who witnessed the incident.³

(4) The provision of any evidence under this section or other provisions of this part, including one or more affidavits, would not, in and of itself, be sufficient to confirm the facts presented by that evidence. NIOSH will consider the adequacy and credibility of any evidence provided.

(5) If, under § 83.15(a), NIOSH has already issued a FEDERAL REGISTER notice scheduling a Board meeting to consider a petition concerning a class

of employees, then any petitions for such a class of employees submitted following this notice must, under paragraph (c)(2) of this section, present substantially new information that has not already been considered by NIOSH. For this purpose, NIOSH would find that information has been already considered by NIOSH if it were included in the petition(s) that were already considered by NIOSH or if it were addressed either in the report(s) by NIOSH evaluating such a petition or petitions under § 83.13(c) or in a proposed decision by NIOSH responding to such a petition or petitions under § 83.16(a).

TABLE 1 FOR § 83.9: SUMMARY OF INFORMATIONAL REQUIREMENTS FOR ALL PETITIONS

[Petitioner(s) must submit identifying and contact information and either A. or B. of this table.]

A. The claimant's authorization of the petition, based on NIOSH having found it could not complete a dose reconstruction for the claimant submitting the petition; or.	B. (1) A proposed class definition identifying: (i) Facility, (ii) relevant locations at the facility; (iii) job titles/duties, (iv) period of employment, and if relevant, (v) exposure incident. (2) The basis for infeasibility of dose reconstruction; either: (i) lack of monitoring; or (ii) destruction, falsification, or loss of records; or (iii) expert report; or (iv) scientific or technical report.
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§ 83.10 If a petition satisfies all relevant requirements under § 83.9, does this mean the class will be added to the Cohort?

Satisfying the informational requirements for a petition does not mean the class will be added to the Cohort. It means the petition will receive a full evaluation by NIOSH, the Board, and HHS, as described under §§ 83.13 through 83.16. The role of the petitioner(s) is to identify classes of employees that should be considered for addition to the Cohort.

§ 83.11 What happens to petitions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?

(a) NIOSH will notify the petitioner(s) of any requirements that are

not met by the petition, assist the petitioner(s) with guidance in developing relevant information, and provide 30 calendar days for the petitioner(s) to revise the petition accordingly.

(b) After 30 calendar days from the date of notification under paragraph (a) of this section, NIOSH will notify any petitioner(s) whose petition remains unsatisfactory of the proposed finding of NIOSH that the petition fails to meet the specified requirements and the basis for this finding.

(c) A petitioner may request in writing a review of a proposed finding within 30 calendar days of notification under paragraph (b) of this section. Petitioners must specify why the proposed finding should be reversed, based on the petition requirements and on

³An affidavit may be from a petitioner but HHS does not require that an affidavit be from a petitioner.

the information that the petitioners had already submitted. The request may not include any new information or documentation that was not included in the completed petition. If the petitioner obtains new information within this 30 day period, the petitioner should provide it to NIOSH. NIOSH will consider this new information as a revision of the petition under paragraph (a) of this section.

(d) Three HHS personnel, appointed by the Director of NIOSH, who were not involved in developing the proposed finding will complete reviews within 30 work days of the request for such a review. The Director of NIOSH will consider the results of the review and then make a final decision as to whether the petition satisfies the requirements for evaluation.

(e) Proposed findings established by NIOSH under paragraph (b) of this section will become final decisions in 31 calendar days if not reviewed under paragraph (d) of this section.

(f) Based on new information, NIOSH may, at its discretion, reconsider a decision not to select a petition for evaluation.

§ 83.12 How will NIOSH notify petitioners, the Board, and the public of petitions that have been selected for evaluation?

(a) NIOSH will notify the petitioner(s) in writing that it has selected the petition for evaluation. NIOSH will also provide the petitioner(s) with information on the steps of the evaluation and other processes required pursuant to these procedures.

(b) NIOSH will combine separate petitions and evaluate them as a single petition if, at this or at any point in the evaluation process under §§ 83.13 and 83.14, NIOSH finds such petitions represent the same class of employees.

(c) NIOSH will present petitions selected for evaluation to the Board with plans specific to evaluating each petition. Each evaluation plan will include the following elements:

(1) An initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation conducted under § 83.13 or § 83.14; and

(2) A list of activities for evaluating the radiation exposure potential of the

class and the adequacy of existing records and information needed to conduct dose reconstructions for all class members under 42 CFR part 82.

(d) NIOSH may initiate work to evaluate a petition immediately, prior to presenting the petition and evaluation plan to the Board.

(e) NIOSH will publish a notice in the FEDERAL REGISTER notifying the public of its decision to evaluate a petition.

§ 83.13 How will NIOSH evaluate petitions, other than petitions by claimants covered under § 83.14?

(a) NIOSH will collect information on the types and levels of radiation exposures that potential members of the class may have incurred, as specified under 42 CFR 83.14, from the following potential sources, as necessary:

(1) The petition or petitions submitted on behalf of the class;

(2) DOE and AWE facility records and information;

(3) Potential members of the class and their survivors;

(4) Labor organizations who represent or represented employees at the facility during the relevant period of employment;

(5) Managers, radiation safety officials, and other witnesses present during the relevant period of employment at the DOE facility or AWE facility;

(6) NIOSH records from epidemiological research on DOE populations and records from dose reconstructions conducted under 42 CFR part 82;

(7) Records from research, dose reconstructions, medical screening programs, and other related activities conducted to evaluate the health and/or radiation exposures of DOE employees, DOE contractor or subcontractor employees, and/or AWE employees; and

(8) Other sources.

(b) The Director of OCAS may determine that records and/or information requested from DOE, an AWE, or another source to evaluate a petition is not, or will not be, available on a timely basis. Such a determination will be treated, for the purposes of the petition evaluation, as equivalent to a finding that the records and/or information requested are not available.

(1) Before the Director of OCAS makes such a determination, the